

Attorney Docket No. RSW920040131US1
Serial No. 10/711,981
Response to Office Action mailed 1/25/06

II. DRAWING AMENDMENTS

The drawings have been amended as follows;

On FIG. 1, the words PRIOR ART have been added.

On FIG. 2, the words PRIOR ART have been added.

On FIG. 3, "Exemplary Prior Art Network 10" has been changed to —Network 100—.

A copy of the corrected drawings are attached on the following pages.

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IV. REMARKS

1. The Drawings. The examiner objected to the drawings. The examiner objected to the drawings because they did not show "network 100" or network node 100 as described in the specification. FIG. 3 has been amended to change "Exemplary Prior Art Network 10" to Network 100. Paragraph 0011 has been amended to change "network nodes 100-130" to -- network nodes 105-130—. The examiner objected to reference character 100 being used in the specification to designate both "network 100" and "network node 100." Paragraph 0011 has been amended to eliminate the reference to network node 100.

2. The specification.

a. The examiner objected to the specification because it should be updated with the current status of the cited applications. Paragraphs [0001], [0003], and [0004] have been amended to provide the application numbers of the cited applications.

b. The examiner objected to the specification because it contained an embedded hyperlink. Paragraph [0002] has been amended to remove the embedded hyperlink.

c. The examiner objected because the specification should include a header "Brief Description of the Several Views of the Drawings." Applicant amended the section heading "Brief Description of the Drawings" to —Brief Description of the Several Views of the Drawings"—.

3. Claim Objections.

a. The examiner objected to the claims because the claims were not indented. The amended claims are indented.

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b. The examiner objected to "any customer" in claims 1, 2, and 3, to "standard customer" in claims 2 and 3, and to "the performance level" and "a penalty" in claim 2. Applicant has made appropriate corrections in the amended claims.

4. Claim Rejections.

a. Claims 1 and 3.

(1) The examiner. The examiner rejected claims 1 and 3 in view of US Pub. 2005/0120102 (Gandhi) in view of US 6,799,208 (Sankaranarayanan). Gandhi discloses a method for allocating network resources using a token bucket methodology. The examiner compares applicant's determination of which class of customer is using a resource and reallocating the resource to a redistribution of tokens from one customer to another. The examiner stated that Gandhi did not "explicitly teach reallocating a resource from a standard customer to [a] premium customer as claimed." Sankaranarayanan discloses a resource management architecture where a policy manager is used to allocate resources, and "a priority based policy" distinguishes "among which applications and/or users have priority over others to use the resources. The examiner stated that "it would have been obvious to one of ordinary skill in the art at the time of the invention...to modify Gandhi to reallocate the resource from a standard/lower priority customer to a premium/higher-priority customer as in Sankaranarayanan.

(2) Response. Applicant's invention allocates resources based upon the result of minimizing the compensation to be paid by the service provider (Claim 1) or a penalty (Claim 3). Thus the allocation is not based upon tokens, or the specific usage of customers, but on the

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calculation of the allocation that will minimize the compensation or the penalty to the service provider.

b. Claim 2.

(1) The examiner. The examiner rejected claim 2 in view of Gandhi, in view of US Pub. 2003/0074245 (Salle) and further in view of Sankaranarayanan. The examiner compares applicant's determination of which class of customer is using a resource and reallocating the resource to a redistribution of tokens from one customer to another. The examiner stated that Gandhi does not disclose a service level agreement stored in a memory and setting a threshold performance level. Nor does Gandhi disclose a means for measuring performance, compare the performance, and reallocate resources. But Salle teaches a service level agreement stored in a memory and setting a threshold performance level and a penalty for failing to meet the threshold performance. Salle determines the gain to a supplier when a contact is fulfilled and the penalty incurred when the contract is not fulfilled, and allocates resources to give the "greatest utility to the supplier." (abstract). The examiner stated that it would have been obvious to one of ordinary skill in the art to incorporate the service level agreement setting a threshold and a penalty into the Gandhi system of allocating resources. The motivation would arise from optimally allocating resources in the event of a conflict.. Finally, Sankaranarayanan teaches reallocating resources from a low priority customer to a high priority customer.

(2) Response. Applicant's invention allocates resources based upon the result of minimizing the penalty to the service provider as a result of a breach of the service level agreement. Thus the allocation is not based upon tokens, or the specific usage of customers, but on the calculation of the allocation that will minimize the penalty to the service provider. Such a penalty is different from the concept disclosed in Salle, where the supplier loses money if the

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contract is not fulfilled (i.e. loss of the goods). Rather, applicant is concerned with the contractual provisions and penalty clauses for a breach of the service level agreement, and calculates the allocation of resources to minimize this amount.